

FRANK BILAN, No C 10-80323 VRW

Petitioner, ORDER

v

UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE, and
JEFF MAURICE, Special Agent,

Respondents.

On December 29, 2010, petitioner Frank Bilan filed a petition to quash a summons issued by the Internal Revenue Service ("IRS") to petitioner's employer, Intersil Corporation ("Intersil"). Doc #1. On January 6, 2011, petitioner filed an amended petition requesting that the court quash summonses issued to Equifax Credit Information Services Inc, Umpqua Bank, Bank of the West, Bank of America, Experian Credit Notification Services Inc and Transunion Corporation. Doc #4 at 6-7. On February 17, 2011, respondents United States of America, IRS and Special Agent Jeff Maurice filed an opposition to petitioner's motion to quash

1 and a motion to dismiss the petition for lack of subject matter
2 jurisdiction. Doc #8.

3 Respondents' brief raises several issues that were not
4 addressed in the original petition to quash. Before the court
5 decides respondent's motion to dismiss or the substance of the
6 underlying petition, petitioner should be provided an opportunity
7 to respond. In particular, the court orders petitioner to address
8 the following issues: (1) alleged defects in the service of his
9 petition, (2) the grounds on which he is entitled to challenge the
10 summons issued to Intersil and (3) whether the court has subject
11 matter jurisdiction over each of the entities targeted by the IRS
12 summonses. These issues are described in more detail below.

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14 I

15 Respondent argues that petitioner did not provide proper
16 notice to respondents because he failed to serve his petition on
17 the Attorney General of the United States. Doc #8 at 2-3.

18 The requirements for service of a petition to quash an
19 IRS summons are set forth in 26 USC § 7609(b)(2)(B). That section
20 requires a moving party to serve by registered or certified mail a
21 copy of the petition on the person summoned by the IRS and on any
22 office designated in the notice provided with the original IRS
23 summons. 26 USC § 7609(b)(2)(B). Here, the notice provided with
24 the IRS summonses states that any "petition [to quash] must be
25 served upon the appropriate parties, including the United States,
26 as required by [FRCP 4]" and that the IRS should be served by
27 mailing a copy of the petition to the officer that issued the IRS
28 summons. Doc #1 at 11. FRCP 4(i) requires a party serving process

1 on the United States to serve a copy of all papers on (1) the
2 United States attorney for the district in which the action is
3 brought, (2) the Attorney General of the United States and (3) the
4 agency or employee sued, if any. FRCP 4(i). Petitioner therefore
5 was required to serve his petition to quash on the entities
6 targeted by the IRS summonses, the United States Attorney for the
7 Northern District of California, the Attorney General of the United
8 States and Jeffrey Maurice (the agent who issued the IRS
9 summonses).

10 Petitioner's proof of service states that he served his
11 original petition – which moved to quash the Intersil summons only
12 – via certified mail on the United States Attorney for the Northern
13 District of California, Agent Maurice and Intersil. Doc #3 at 2.
14 Petitioner served his amended petition – which moved to quash the
15 Intersil summons and several other summonses – via certified mail
16 on Agent Maurice and the targets of the IRS summonses, but not on
17 the United States Attorney. Doc #5 at 2-3. Petitioner did not
18 serve either version of his petition on the Attorney General of the
19 United States. See Doc ##3; 5.

20 The court agrees that petitioner has not complied with
21 his service obligations under Section 7609 and FRCP 4 – most
22 notably by failing to serve his amended petition on the Attorney
23 General of the United States and the United States Attorney for the
24 Northern District of California. Accordingly, no later than March
25 11, 2011, petitioner is hereby ORDERED to serve his amended
26 petition via registered or certified mail on the Attorney General
27 of the United States and the United States Attorney for the
28 Northern District of California.

II

Respondent argues that the court lacks jurisdiction over petitioner's motion to quash the summons issued to Intersil, petitioner's employer, because Intersil is not a "third-party recordkeeper" as defined by the Internal Revenue Code. Doc #8 at 3-4.

Section 7609(b)(2) provides the general right to file a petition to quash IRS summonses served on third parties. 26 USC § 7609(b)(2). Section 7609(c) states, however, that the section "shall not apply to any summons * * * (E)(i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws; and (ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b))." 26 USC § 7609(c)(2)(E). Each summons at issue in this case was propounded by the criminal investigation unit of the IRS. As a result, petitioner is permitted to file a petition to quash only if the entities targeted by the IRS summonses are third-party record keepers as defined by Section 7603(b).

Entities defined as third-party record keepers under Section 7603(b)(2) include certain banks, consumer reporting agencies, persons who extend credit through the use of credit cards, brokers, attorneys, accountants, barter exchanges, regulated investment companies, enrolled agents and owners and developers of computer software code. 26 USC § 7603(b)(2). Notably, Section 7603(b)(2) does not include employers. See *id.* Nor does petitioner allege that Intersil meets any other category set forth in Section 7603(b)(2). Several courts have held that employers do

1 not qualify as third-party record keepers for purposes of a
2 petition to quash. Beatty v United States, 2008 WL 3983921 at *3
3 (CD Cal 2008); Covington v United States, 853 F Supp 888, 889 (WDNC
4 1994). Petitioner is therefore ORDERED TO SHOW CAUSE why the court
5 should not dismiss his petition to quash the Intersil summons for
6 failing to satisfy Section 7609.

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8 III

9 Jurisdiction over a petition to quash an IRS summons lies
10 in the "United States district court for the district within which
11 the person to be summoned resides or is found." 26 USC §
12 7609(h)(1); Deal v United States, 759 F2d 442, 444 (5th Cir 1985)
13 (affirming the dismissal of a petition to quash IRS summonses
14 because the third-party record keepers did not reside in the
15 district); Scharringhausen v United States, 2003 WL 21517773 at *1-
16 2 (SD Cal 2003). A petitioner "seeking to invoke the court's
17 jurisdiction bears the burden of establishing that jurisdiction
18 exists." Scott v Breeland, 792 F2d 925, 927 (9th Cir 1986).

19 Although respondents' brief does not raise the issue of
20 subject matter jurisdiction under Section 7609(h)(1), the summonses
21 served on Equifax Credit Information Services Inc, Umpqua Bank,
22 Experian Credit Notification Services Inc and Transunion
23 Corporation each reflect an address that is not within this
24 district. Doc #4 at 9-22. Petitioner has not provided an
25 affidavit or any other evidence to establish that these entities
26 reside in or can be found in the Northern District of California.

27 Accordingly, petitioner is ORDERED TO SHOW CAUSE why his
28 petition to quash the summonses served on Equifax Credit

1 Information Services Inc, Umpqua Bank, Experian Credit Notification
2 Services Inc and Transunion Corporation should not be dismissed for
3 lack of subject matter jurisdiction under 26 USC § 7609(h)(1).
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5 IV

6 Petitioner is hereby ORDERED to respond to each of the
7 issues above on or before March 11, 2011 in a writing that is not
8 more than ten pages. This matter will be deemed submitted at that
9 time. Finally, due to the pending retirement of the undersigned,
10 the clerk is directed to reassign the case.
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12 IT IS SO ORDERED.

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15 VAUGHN R WALKER
16 United States District Judge
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